

1983 BILL 29

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 29

BUSINESS CORPORATIONS AMENDMENT ACT, 1983

THE MINISTER OF CONSUMER AND
CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 29

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BUSINESS CORPORATIONS AMENDMENT ACT, 1983

(Assented to _____, 1983)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

- 1 *The Business Corporations Act is amended by this Act.*
- 2 *Section 6(2) is amended by striking out "by-law" and substituting "by law".*
- 3 *Section 19 is amended*
 - (a) *by repealing subsection (4) and substituting the following:*
 - (4) A post office box designated as the corporation's address for service by mail shall not be designated as the corporation's records office or registered office.
 - (b) *in subsection (6) by striking out " , if any,".*
- 4 *Section 25(5) is amended by adding "given by the allottee" "pay".*
- 5 *Section 26(10) is repealed and the following is substituted:*
 - (10) When a body corporate is continued under this Act, stated capital of each class and series of shares of the corporation immediately following its continuance is deemed to equal paid up capital of each class and series of shares of the body corporate immediately prior to its continuance.
- 6 *Section 37.1(1) is amended by adding " , and those obligations remain obligations of the corporation until they are discharged" "repaid".*

Explanatory Notes

- 1 This Bill will amend chapter B-15 of the Statutes of Alberta, 1981.
- 2 Corrects typographical error.
- 3 Section 19 presently reads in part:
 - (4) *If the directors of a corporation designate a post office box as the corporation's address for service by mail, they shall by the same resolution revoke any designation of a records office filed with the Registrar.*
 - (6) *The corporation shall ensure that its registered office and its records office, if any, are*
 - (a) *accessible to the public during normal business hours, and*
 - (b) *readily identifiable from the address or other description given in the notice referred to in subsection (2).*
- 4 Section 25(5) presently reads:
 - (5) *For the purposes of this section, "property" does not include a promissory note or promise to pay.*
- 5 Section 26(10) presently reads:
 - (10) *For the purposes of sections 32(2), 36(3), 40, 42(1) and 179(2)(a), when a body corporate is continued under this Act, its stated capital is deemed to include the amount that would have been included in the stated capital of the body corporate if it had been incorporated under this Act.*
- 6 Section 37.1(1) presently reads:
 - 37.1(1) *Debt obligations issued, pledged, hypothecated or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged, hypothecated or deposited is repaid.*

7 Section 88.2 is amended

(a) by repealing subsection (1) and substituting the following:

88.2(1) Subject to section 88.9, every mortgage of its property situated in Alberta created by a corporation, Alberta company or registered extra-provincial corporation

(a) for the purpose of securing any debenture,

(b) on uncalled or unpaid share capital,

(c) as a floating charge on its undertaking or property,

(d) as a mortgage or charge on goodwill on any patent, licence under a patent, trade mark, copyright or licence under a copyright,

is, unless the mortgage is registered under this section or section 88.3, so far as any security on the property or undertaking of the corporation, Alberta company or extra-provincial corporation is thereby conferred, void against a liquidator, assignee, receiver or creditor of the corporation, Alberta company or registered extra-provincial corporation and against any subsequent bona fide purchaser or mortgagee for valuable consideration, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(b) by repealing subsection (4);

(c) in subsection (6) by adding "or registered office respectively" after "office".

8 Section 88.3(2)(a) is amended by adding "registered under this Act or the Companies Act" after "of a mortgage".

9 Section 88.4 is amended

(a) in subsection (1) by striking out "body corporate" and substituting "corporation, an Alberta company and a registered extra-provincial corporation";

7 Section 88.2 presently reads in part:

88.2(1) Subject to section 88.9, every mortgage of its property situated in Alberta created by a body corporate

- (a) for the purpose of securing any debenture,*
- (b) on uncalled or unpaid share capital,*
- (c) as a floating charge on its undertaking or property, or*
- (d) as a mortgage or charge on goodwill on any patent, licence under a patent, trade mark, copyright or licence under a copyright,*

unless the mortgage is registered under this section, is, so far as any security on the body corporate's property or undertaking is thereby conferred, void against a liquidator, and any assignee, receiver, and creditor of the body corporate, and any subsequent bona fide purchaser or mortgagee for valuable consideration, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(4) If a mortgage is not registered within the time referred to in subsection (2), the money secured by it becomes payable immediately on the expiration of that time.

(6) Every corporation and every Alberta company shall keep at its records office a copy of every instrument creating any mortgage requiring registration under this section, but in the case of a series of uniform debentures not covered by a deed creating or defining the security, a copy of one such debenture is sufficient.

8 Section 88.3(2) presently reads:

(2) The Court, on being satisfied

(a) that any omission or misstatement in a mortgage or particulars of a mortgage, or in a memorandum of satisfaction,

(i) was accidental or due to inadvertence or to some other sufficient cause, or

(ii) is not of a nature to prejudice the position of creditors or shareholders of the body corporate, or

(b) that on other grounds it is just and equitable to grant relief

may, on the application of the body corporate or any person interested, and on any terms and conditions that seem to the Court just and expedient, order that the omission or misstatement be rectified.

9 Section 88.4 presently reads:

88.4(1) A body corporate shall register every mortgage created by it and requiring registration under this Act, but registration of any such mortgage may be effected on the application of any interested person.

(b) in subsection (2) by striking out "body corporate" wherever occurs and substituting "corporation, Alberta company or registered extra-provincial corporation";

(c) in subsection (3) by striking out "body corporate" and substituting "corporation, Alberta company or registered extra-provincial corporation".

10 Section 88.5(1) is amended by adding "or registered office" respectively after "office".

11 Section 101(3) is amended

(a) by adding "subsection (9)(a) and" after "Subject to";

(b) by striking out "3rd" and substituting "next".

12 Section 109(2) is amended by striking out "or minimum number of directors required by the articles" and substituting "appointed".

13 Section 171(1) is amended by striking out "168(3)" and substituting "168(4)".

14 The following is added after section 201:

201.1 Section 201 applies to a society that has been removed from the register under the *Companies Act*.

15 Section 202(6) is amended by striking out "261" and substituting "262".

16 Section 223(3), (4), (5) and (6) are amended by striking out "223" and substituting "224".

17 Section 230 is amended by striking out "223" and substituting "224".

18 Section 254 is amended

(a) in subsection (1) by striking out "Subject to subsections (2) and (3), the" and substituting "The";

(b) by repealing subsections (2) and (3).

(2) If the registration is effected on the application of a person other than the body corporate, that person may recover from the body corporate the amount of any fees properly paid by him to the Registrar on the registration and on an application to the Court under section 88.3.

(3) Every body corporate that makes default in the registration of any mortgage requiring registration under this Division is, without prejudice to any other liability, guilty of an offence and liable to a fine of not more than \$1000.

10 Section 88.5(1) presently reads:

88.5(1) Every corporation and every Alberta company shall keep at its records office a register of mortgages in which shall be entered all mortgages specifically affecting property of the corporation or Alberta company, giving in each case a short description of the property mortgaged, the amount of the mortgage and, except in the case of securities to bearer, the names of the mortgagees or persons entitled to the mortgages.

11 Section 101(3) presently reads:

(3) Subject to section 102, shareholders of a corporation shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the 3rd annual meeting of shareholders following the election.

12 Section 109(2) reads as follows:

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors, and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

13 Corrects error in reference.

14 Revival of society.

15 Corrects error in reference.

16 Corrects error in reference.

17 Corrects error in reference.

18 Section 254 presently reads in part:

254(1) Subject to subsections (2) and (3), the Lieutenant Governor in Council may make regulations . . .

(2) Subject to subsection (3), the Minister shall publish in the Registrar's periodical at least 60 days before its proposed effective date a copy of every

19 Section 261 is amended

(a) by repealing subsection (4)(b) and substituting the following:

(b) shall authorize the directors to apply for a certificate of continuance under this section, and

(b) by adding the following after subsection (6):

(6.1) An Alberta company shall, before a certificate of continuance is issued, provide the Registrar with proof satisfactory to him that the resolution required by subsection (6) has been passed.

(c) by adding the following after subsection (7):

(7.1) Where articles of continuance effect a change of a kind referred to in subsection (7), the Alberta company shall, before a certificate of continuance is issued, provide the Registrar with proof satisfactory to him that the consent required by subsection (7) has been given.

20 Section 266(3) is amended by striking out "immediately before the coming into force of this Act" and substituting "on the date that the Act came into force".

21 Section 269(1) is repealed and the following is substituted:

269(1) An extra-provincial corporation shall not be registered with a name or carry on business within Alberta under an assumed name that is

(a) prohibited by the regulations,

(b) identical to the name of a body corporate incorporated under the laws of Alberta,

regulation that the Lieutenant Governor in Council proposes to make under this Act and a reasonable opportunity shall be afforded to interested persons to make representations with respect to it.

(3) The Minister is not required to publish a proposed regulation if the proposed regulation

(a) grants an exemption or relieves a restriction,

(b) establishes or amends a fee,

(c) has already been published pursuant to subsection (2), whether or not it has been amended as a result of representations made by interested persons as provided in that subsection, or

(d) makes no material substantive change in an existing regulation.

19 Section 261 presently reads in part:

(4) The shareholders of the Alberta company entitled to vote at meetings of members

(b) shall authorize the directors to provide for

(i) the execution of the articles of continuance, and

(ii) the making of the application under this section,

(6) The shareholders of an Alberta company shall act under subsection (4)

(a) by a special resolution as defined in section 1(y) of the Companies Act, or

(b) if its memorandum of association provides that a special resolution to alter the articles of association must be passed by a majority greater than 3/4 of the votes cast in person or by proxy, by a resolution passed by that greater majority.

(7) Except with the written consent of all shareholders entitled to vote thereon under section 170(1), the articles of continuance shall not contain anything that would result in a change from the Alberta company's memorandum of association or articles of association, if the change is of a kind referred to in that subsection.

20 Section 266(3) presently reads:

(3) An extra-provincial corporation registered under Part 8 of the Companies Act immediately before the coming into force of this Act is deemed to be registered under this Part.

21 Section 269(1) presently reads:

269(1) An extra-provincial corporation shall not be registered with or, within Alberta, have, carry on business under or identify itself by, a name that is

(a) prohibited by the regulations,

(b) identical to the name of a body corporate incorporated under the laws of Alberta,

(c) reserved for an intended corporation or a corporation under section 11(1),

(d) reserved for an extra-provincial corporation or an intended extra-provincial corporation under section 268, or

(e) disapproved by the Registrar pursuant to subsection

22 *Section 270 is amended by adding the following after subsection (3):*

(4) An extra-provincial corporation that assumes a name pursuant to subsection (1) may, with the approval of the Registrar and on application in the prescribed form and payment of prescribed fee, cancel its assumed name and carry on business in Alberta under the name in which it was registered.

23 *Section 272(2)(a)(i) is amended by striking out “registered”*

24 *Section 284 is amended*

(a) *in subsection (7)(b) by striking out “19(3)(b)” and substituting “19(3)”;*

(b) *in subsection (8)(b) by striking out “72(1)” and substituting “77(1)”;*

25 *In the following provisions “or The Alberta Gazette” is added after “Registrar’s periodical”:*

- section 204(7)(b)(i) and (10)(b);
- section 205(2)(b);
- section 206(4)(b);
- section 214(b);
- section 272(2)(b);
- section 278(2)(a).

(c) reserved for an intended corporation or a corporation under section 11(1),

(d) reserved for an extra-provincial corporation or an intended extra-provincial corporation under section 268, or

(e) disapproved by the Registrar pursuant to subsection (2).

22 Cancellation of assumed name.

23 Section 272(2) presently reads:

(2) The Registrar shall not cancel the registration of an extra-provincial corporation under subsection (1) until

(a) he has given at least 120 days' notice of the proposed cancellation with his reasons for it,

(i) to the extra-provincial corporation by registered mail addressed to its head office, and

(ii) to its attorney for service in accordance with section 275,

(b) he has published a notice of the proposed cancellation in the Registrar's periodical, and

(c) either no appeal is commenced under section 239 or, if an appeal has been commenced, it has been discontinued or the Registrar's decision is confirmed on the appeal.

24 Corrects error in reference.

25 Permits publication of notices, etc., in the Gazette instead of the Registrar's periodical.

26 Section 24 is deemed to have come into force on February 1982.

In accordance with section 4(1) of the Interpretation Act, this Bill, except section 24, comes into force on the date it receives Royal Assent.